



Washington State
Department of Health
Podiatric Medical Board
Meeting Minutes
September 7, 2006

The meeting of the Washington State Podiatric Medical Board was called to order by David Bernstein, DPM, Chair, at 9:10 a.m. The meeting was held at the Hilton Seattle Airport and Conference Center, 17620 International Blvd., SeaTac, Washington 98188.

Board Members

Participating:

David Bernstein, DPM, Chair
Stewart Brim, DPM, Vice Chair
James Porter, DPM
Rex Nilson, DPM

Staff Participating:

Blake Maresh, Executive Director
Arlene Robertson, Program Manager
Dori Jaffe, Assistant Attorney General
Peter Harris, Staff Attorney
Joe Mihelich, Administrative Staff

Guests:

Laurie Jenkins, Assistant Secretary
Patti Latsch, Deputy Director
Tami Thompson, Policy Office
LaVonda McCandless and Jamie Mai, Labor
& Industries

Public Attendees:

Martin Ziontz, Attorney, representing
Washington State Podiatric Medical
Association

OPEN SESSION

1. Call to Order

1.1 Approval of Agenda

The agenda was modified to include updates on the
prescriptive orthotic rule, continuing education

internet courses accepted by other licensed professions, and status of the physical therapy rules. The agenda was approved as modified.

- 1.2 Approval of Minutes - May 11, 2006
The May 11, 2006 minutes were reviewed and approved as written.
 - 1.3 Approval of Conference Call Minutes - June 29, 2006
The June 29, 2006 conference call minutes were approved.
 - 1.4 Approval of Conference Call Minutes - July 10, 2006
The July 10, 2006 conference call minutes were approved.
 - 1.5 Approval of Conference Call Minutes - August 17, 2006
The August 17, 2006 conference call minutes were approved.
2. 9:00-10:00 a.m. - Rules Process Presentation
Tami Thompson, Policy Office

Ms. Thompson provided a thorough presentation on the rules process. Ms. Thompson indicated that rules can be made in response to various situations. These include: Legislative mandates or changes in the law, a court order, a petition, Federal change of rules or law, changes in the environment or technology, or a request by an interested party.

Rules must follow procedural timelines set in law and rule and must include public involvement. The CR101 provides for an inquiry period to explore whether rules are necessary and the best solution to a problem, and if controversial, to craft proposed language. The CR102 filing identifies proposed language, analysis of the proposal, and a Small Business Economic Impact Statement, if applicable. A rules hearing is also held at this time and public comment is collected on the proposed rule. A CR103 is filed with the final language adopted at the rules hearing. The documents filed in each step must be reviewed by DOH program and division staff, the Board or program Assistant Attorney General, and policy staff in the Secretary's Office. Rule packages are approved by the Director, Assistant Secretary, and Secretary within the Department before proceeding. The rules are then filed with the Office of the Code Reviser and published in the State Register. Interested parties are

notified by regular mail or ListServ at each stage of the process.

3. 10:00-10:30 a.m. - Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain - Presentation by LaVonda McCandless, LNI

ISSUE

LaVonda McCandless, RN, Occupational Nurse Consultant, and Jamie Mai, PharmD, Labor and Industries, provided background information regarding the interagency workgroup and other participants who are working on the Guideline on Opioid Dosing for Chronic Non-cancer Pain. New research suggests that higher doses of opioids may: (a) heighten the risk of accidental death; and (b) have the inadvertent effect of producing abnormal pain sensitivity.

The guidelines are intended to provide clear, easy-to-use guidelines that will assist family practitioners in prescribing opioids in a safe and effective manner; raise awareness of the risks and possible ineffectiveness of high opioid doses; provide strategies for weaning patients from opioids entirely or from unsafe doses; and to provide strategies for supporting patients throughout the process. This draft is the first part of the guidelines. A second part will address strategies to use when opioids are not working for a patient. When the guidelines are adopted by the participating agencies, it is intended that physicians treating patients and receiving reimbursement through state programs will follow the guidelines.

ACTION

The Board expressed concerns about setting specific dosage limits. It is the Board's perspective that setting specific dosage amounts in a guideline creates a problem treating patients. Patients' needs are all different and dosage levels for narcotics must be prescribed for the individual. The recommendation in the Guideline to refer patients also raised concerns. The Board indicated there are few pain specialists available for consultation or referral for treatment of these unique patients.

The intent of the participating agencies that all providers who receive reimbursement from state programs must follow the Guideline would, in a practical sense, have the effect of law. Eventually other insurance companies will impose

the same standards. The Board indicated it was inappropriate for insurance companies to determine the standard of care. It does not support putting practice standards into law. Laws or rules allow little or no flexibility for practice standards to change to include new modalities of medicine.

The Board unanimously determined that it could not support the draft Guideline. The Board will prepare a letter with their comments to forward to the Agency Medical Directors Workgroup.

4. 10:30-11:30 a.m. - Disciplinary Process Update:
Noncompliance, sanctions, and HB 2974 impacts
Presentation by Patti Latsch, Deputy Director
 - 4.1 Disciplinary Issues
 - 4.1.1 Proposed Uniform Disciplinary Act Changes
Request Legislation
 - 4.1.2 Implementation of HB 2974
2006 Legislation pertaining to mandatory
reports, mandatory denial or suspension,
impacts on investigations
 - 4.1.2.1 Procedure: Mandatory Summary
Actions

Ms. Latsch provided updates on recent changes to several of the disciplinary processes.

An expedited process that does not involve further investigation has been established to handle some noncompliance cases. The Compliance Officer will identify noncompliance with the conditions specified in the order. The Board will review the case to determine if substantial noncompliance has occurred and whether to authorize use of the fast track process. After notice, a "fast track" hearing for suspension of the credential (orders only) is scheduled. Monetary noncompliance would be sent to a collection agency.

Sanction guidelines have been developed and implemented for use with the Secretary Professions. There are seven conduct categories: sexual contact, abuse, drug diversion, felony convictions, practice below the standard of care, misuse of drugs and alcohol, and noncompliance. The sanctions are based upon the severity of the conduct and take into consideration aggravating or mitigating circumstances. Grids are used to determine the severity of the action. A list of sanctions and conditions can be used in determining appropriate remedial actions. Boards and Commissions are

requested to use the guidelines on a trial basis and provide feedback on any problems they have in their use. It is hoped that Boards and Commissions will adopt the Guidelines.

Ms. Latsch spoke about implementation of several portions of HB 2974. The bill addresses mandatory reporting rules, mandatory denials of applications, and mandatory summary suspensions. The Secretary has been directed to adopt rules related to mandatory reports. Although many boards/commissions already have mandatory reporting rules, a coordinated effort will involve all professions during the rulemaking process. Another mandate of the law will require denial of an application, or summary suspension of a current license, if the individual has been prohibited from practice in another state for conduct that is substantially similar to unprofessional conduct in Washington. The disciplining authority will make a final determination on the status of the license.

5. 11:30 a.m.-12:30 p.m. - Reorganization: Status update
Presentation by Laurie Jenkins, Assistant Secretary

Ms. Jenkins provided an overview of the process that has been occurring over the last several months to review the activities of Health Systems Quality Assurance Division. It has involved outlining a mission statement and strategic planning of priorities. The objectives of the reorganization are to improve patient safety, increase public confidence, and adopt a thorough approach to system improvements. Five offices have emerged as the result of input on several levels. Although there is not an exact staffing plan yet, the new offices will be: Health Professions and Facilities, Customer Service, Inspection and Compliance, Legal Services, and Community Health Systems. There is still a great deal of work to be done before any structure changes can be made. Ms. Jenkins indicated that her goal is to coordinate the implementation with the beginning of the new biennium in July 2007.

Ms. Jenkins responded to questions from the Board.

6. Rules
 - 6.1 Sexual Misconduct - Work Session
 - 6.1.1 Draft language approved at May 11, 2006 meeting
 - 6.1.2 Standards of Professional Conduct - Proposed rules for Secretary authority professions

ISSUE

The Department requested that professions who have not already adopted sexual misconduct rules consider the proposed language for Secretary authority professions before proceeding to hearing.

ACTION

The Board determined to remain with the draft language it had previously approved. The approved language will provide greater flexibility when evaluating complaints than the proposed language for Secretary professions. It will also provide for consistent standards for all of the professions practicing medicine, i.e., MDs, DOs, PAs, and DPMs.

6.2 Pain Management rules

6.2.1 Draft language from coordinated meetings

6.2.2 Draft language approved by Board

ISSUE

When the pain management rules were originally conceptualized, workshops were held to gather input. The Medical Quality Assurance Commission (MQAC), Board of Osteopathic Medicine and Surgery, and Podiatric Medical Board participated in the workshops. The language went through numerous drafts (approximately 12-14). The same language was agreed upon by the constituent groups, DOH, and boards and commission. MQAC adopted the original language.

The Board was asked to take another look at the rules in January 2005 before proceeding to hearing. The draft was the same language as had been adopted by MQAC. The current board members and AAG had not been involved in the original meetings and language development. The decision in January 2005 was to remove subsection (2) of WAC 246-922-540.

Since the original language was agreed upon through the collaborative process, the Department wants the Board to be aware of how the language came into existence. The Department is asking the Board to reconsider retaining the original language.

ACTION

The Board indicated that protection for the podiatric physician using opioids to treat chronic pain was retained in the Intent section. It states there would be no disciplinary action as long as the standard of care was followed. The sentence that was removed could have interfered with the Board from taking necessary action against a licensee and would not be in the best interest of

the public. The Board determined the language that had been previously approved should be filed for hearing.

6.3 Standards for Use of Laser, light, radiofrequency and plasma devices - Proposed rules by the Medical Quality Assurance Commission for physicians and physician assistants

ISSUE

The Board reviewed the Laser rules that have been adopted by the Medical Quality Assurance Commission. The rules will be effective March 1, 2007.

ACTION

The Board indicated that the scope of practice for a podiatric physician is limited to below the knee, including the use of lasers. The Board determined that podiatric scope of practice did not warrant adopting rules regulating lasers, which are primarily being used for cosmetic purposes.

6.4 Update on orthotic prescribing rule.

Ms. Robertson reported she had begun working on the CR101 paperwork but was having difficulty expressing the Board's intent. Work on other rules has slowed the progress but will be ready for Department review within a few weeks.

6.5 Update on the physical therapy debridement rule.

ISSUE

The Podiatry Board expressed concern that rules proposed by the Physical Therapy Board requiring 20 hours training to perform sharp debridements remained unchanged in the CR103 filing. The Board expressed concerns about a physical therapist's ability to differentiate between "devitalized" and "vital" tissues. Basic wound care concepts indicate that debridement that is short of complete removal of all dead tissue is inadequate and that the basic principle of creating a "fresh" wound to facilitate healing requires some trauma to vital tissues. Many of the patients suffering wounds are diabetics suffering peripheral neuropathy. These patients are at very high risk for infection and subsequent loss of limb or life if their wounds are not managed properly.

Since the Concise Explanatory Statement had not been published at the time of the board meeting, the Board was unable to address specific responses to any additional

questions that might have been raised. However, the Board felt by retaining the 20 hours for training, the PT Board may not have considered its concerns.

ACTION

The Board is requesting the Secretary review the matter by taking into consideration the background information and concerns raised by the Board. Mr. Maresh will discuss the Board's position with DOH staff and report back to the Board at the next meeting.

7. Correspondence

7.1 Martin L. Ziontz, Attorney, Washington State Podiatric Medical Association

Requesting Board's position relative to physicians (podiatrists) selling goods for profit through independent entities under RCW 19.68.010(2).

ISSUE

Martin Ziontz, attorney for the Washington State Podiatric Medical Association, recently asked the Podiatry Board to provide input on a proposal relative to rebating that the Association is considering putting before the Legislature to clarify the existing rebating law. The rebating law is unclear on whether practitioners can sell medical products for profit. In one section it appears to be prohibited and in another it is permitted under some circumstances with disclosure of the practitioner's financial interest in the business providing the service or product.

ACTION

Mr. Ziontz was informed that the Board could not make statements about legislative proposals, nor interpret the law, either generally or in the context of specific disciplinary cases. A request would have to be made to the Attorney General and those requests may only come through limited channels. It was noted there is currently a case before the Supreme Court on rebating. Ms. Jaffe indicated it is the policy of the Attorney General not to issue opinions on similar subjects when unresolved cases are still before the court. The court case will continue to be monitored.

8. Program Manager Reports

8.1 Budget Report

Ms. Robertson provided a budget report through August 31, 2006. A few items have small overages but overall the expenditures are below the allocation amounts. The revenue

balance has been reduced approximately \$2,000 which is primarily attributed to less expenditures for disciplinary cases than anticipated.

8.2 Washington Physicians Health Program

8.2.1 June 2006 Statistical Information

8.2.2 A comparison of two versions of the clinical institute withdrawal assessment for alcohol: the CIWA-Ar and CIWA-AD by Joseph P. Reoux, MD and Michael R. Oreskovich, MD

Reports from WPHP were provided. No further action was needed.

8.3 Update on the types of continuing education credits accepted by other professions, specific to Online courses.

Ms. Robertson reported she had not had an opportunity to research the question asked by the Board.

9. Executive Director Reports

9.1 Department/Division Updates

Mr. Maresh reported that replacing staff for several vacant positions in the section was currently a priority.

Mr. Maresh is working on a Division project to determine the feasibility of obtaining an imaging system and identifying the type that would be most effective for the Division.

Mr. Maresh indicated in addition to the verbal feedback the Board had provided regarding the draft opioid dosage guidelines, the Board might also consider sending their comments in writing. Dr. Nilson will assist staff in drafting a letter that summarizes the Board's concerns.

10. Schedule 2007 Regular Meeting and Conference call dates for complaint approvals/case reviews.

The following meeting dates were set for 2007:

January 18

April 19

July 19

October 18

Staff will schedule conference calls at approximately two week intervals between board meetings. Conference calls will be held as needed to review complaints and/or cases.

11. (*Open Session*) Settlement Presentations
(Presentations are contingent upon agreements being reached between the parties prior to a board meeting.)

There were no settlement presentations.

CLOSED SESSION

12. Investigative Authorizations

There were no new complaints to review.

13. Disciplinary Case Reviews - Reviewing Board Member Reports

There were no cases reviewed.

14. Compliance Reports

There were no compliance issues to report.

15. Application Review

There were no exception applications for review.

The meeting was adjourned at 4:10 p.m.

Respectfully Submitted

Arlene A. Robertson
Program Manager

NOTE: PLEASE VISIT THE PODIATRIC MEDICAL BOARD'S WEB SITE FOR FUTURE AGENDAS AND MINUTES. WWW.DOH.WA.GOV, GO TO LICENSING AND CERTIFICATION AND YOU WILL FIND A LIST OF THE HEALTH PROFESSIONS, GO TO PODIATRIC PHYSICIANS FOR AGENDAS AND MINUTES.

